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UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re:

PHILIP MICHAEL GOLDFELD,  
ANNE ASHTON GOLDFELD,

Debtors.

PHILIP MICHAEL GOLDFELD,  
ANNE ASHTON GOLDFELD,

Plaintiffs,

v.

JEFFREY A. LONG, TRUSTEE OF  
ELIZABETH STEINER TRUST and  
GRETCHEN STEINER PAN,

Defendants.

Case No. 15-34500-rld7

Adv. Proc. No. 15-03212-rld

**DEFENDANT GRETCHEN PAN'S REPLY  
IN SUPPORT OF MOTION TO DISMISS**

**ORAL ARGUMENT REQUESTED**

**REPLY**

In her motion to dismiss, Defendant Gretchen Pan alleged that Plaintiffs failed to state a claim for willful violation of the automatic stay, because they never alleged that Ms. Pan was a creditor or a creditor's agent, and because no facts were alleged to show that Ms. Pan's alleged

conduct was an attempt to collect on a prepetition debt. Instead of repleading to add the necessary factual allegations, the Plaintiffs continue trying to hide the ball by responding that, with the allegations as stated in the Complaint, “it is not a certainty that Ms. Pan is not a creditor” and that “it is not a certainty that her actions at the 341 hearing and her online postings are not a willful violation of the stay.” Therefore, without ever alleging that Pan is a creditor, Plaintiffs argue that their complaint is sufficient.

The factual allegations of the Plaintiffs’ complaint: 1) identify Ms. Pan as the sole beneficiary of the Elizabeth Steiner Trust; 2) assert that Ms. Pan and the Trust were listed on the Plaintiff’s bankruptcy schedule F; and 3) allege that certain statements were made at the Debtor’s 341 meeting and in an online forum about the debtors.

These facts may create suspicion about a legally cognizable right of action, but “[t]he pleading must contain *something more* ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations removed and emphasis added). No reasonable reading of these facts can give rise to the necessary conclusions that Ms. Pan is a creditor holding a prepetition claim against the Debtors. If she does not hold a claim, Pan cannot take action against the Debtors that could be considered a violation of 11 U.S.C. § 362(a)(6). The Plaintiffs have gone to great lengths to avoid alleging that they owe money to Pan. However, without any allegations, the complaint against Pan should be dismissed.

DATED: February 22, 2016

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB #074027

Troy G. Sexton, OSB #115184

Of Attorneys for Defendant Gretchen Steiner Pan

### CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2016, I served the foregoing **DEFENDANT GRETCHEN STEINER PAN'S REPLY IN SUPPORT OF MOTION TO DISMISS** on the following by mailing first class, postage prepaid, to the following:

NONE

THE FOLLOWING WERE SERVED ELECTRONICALLY THROUGH ECF/PACER:

- ERIK J GRAEFF erikgraefflaw@gmail.com
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MOTSCHENBACHER & BLATTNER, LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB #074027

Attorney for Gretchen Steiner Pan

CERTIFICATE OF SERVICE